

1 DAVID R. ZARO (BAR NO. 124334)
2 TED FATES (BAR NO. 227809)
3 TIM C. HSU (BAR NO. 279208)
4 ALLEN MATKINS LECK GAMBLE
5 MALLORY & NATSIS LLP
6 515 South Figueroa Street, Ninth Floor
7 Los Angeles, California 90071-3309
8 Phone: (213) 622-5555
9 Fax: (213) 620-8816
10 E-Mail: dzaro@allenmatkins.com
11 tfates@allenmatkins.com
12 thsu@allenmatkins.com

13 Attorneys for Plaintiff
14 WILLIAM J. HOFFMAN, Receiver

15
16 **UNITED STATES DISTRICT COURT**
17
18 **CENTRAL DISTRICT OF CALIFORNIA**
19
20 **WESTERN DIVISION**

21 WILLIAM J. HOFFMAN, Court-
22 appointed permanent receiver for
23 Nationwide Automated Systems, Inc.,
24 Oasis Studio Rentals, LLC, Oasis Studio
25 Rentals #2, LLC, Oasis Studio
26 Rentals #3, LLC, and their subsidiaries
27 and affiliates,

28 Plaintiff,

v.

FRANCES McCaffrey, an individual,
Defendant.

Case No. 2:15-cv-7843

**COMPLAINT FOR FRAUDULENT
TRANSFER AND UNJUST
ENRICHMENT**

1 Plaintiff William J. Hoffman of Trigild, Inc. ("Receiver"), the Court-
 2 appointed permanent receiver for Nationwide Automated Systems, Inc. ("NASI"),
 3 Oasis Studio Rentals, LLC, Oasis Studio Rentals #2, LLC, Oasis Studio
 4 Rentals #3, LLC, and their subsidiaries and affiliates ("Receivership Entities"),
 5 hereby brings the following Complaint against the above-captioned Defendant and
 6 alleges, on behalf of the Receivership Entities, as follows:

7 **I. JURISDICTION AND VENUE**

8 1. This Court has jurisdiction over this matter under 28 U.S.C.
 9 sections 1345 and 1367(a), and the doctrines of ancillary and supplemental
 10 jurisdiction, in that this action arises from a common nucleus of operative facts as,
 11 and is substantially related to the original claims in, the Securities and Exchange
 12 Commission ("Commission") enforcement action styled as *Securities and Exchange*
 13 *Commission v. National Automated Systems, Inc., et al.*, United States District
 14 Court, Central District of California, Case No. 14-CV-07249-SJO (FFMx) ("SEC
 15 Action").

16 2. This Court may exercise personal jurisdiction over the above-captioned
 17 Defendant pursuant to Federal Rule of Civil Procedure 4(k)(1)(A).

18 3. Venue in the Central District of California is proper under 28 U.S.C.
 19 section 1391 because this action is an ancillary proceeding to the SEC Action and
 20 because the Receiver was appointed in this District pursuant to the Preliminary
 21 Injunction and Orders (1) Freezing Assets; (2) Prohibiting the Destruction of
 22 Documents; (3) Requiring Accountings; and (4) Appointing a Receiver entered by
 23 this Court in the SEC Action on October 29, 2014 ("Preliminary Injunction").

24 **II. PARTIES**

25 4. The Receiver is the duly appointed permanent receiver for the
 26 Receivership Entities, and was appointed permanent receiver for the Receivership
 27 Entities pursuant to the Preliminary Injunction. Among other things, the
 28 Preliminary Injunction calls for the Receiver to recover and marshal, for the benefit

1 of creditors of and investors in the Receivership Entities, any and all assets which
2 were owned, leased, occupied, or otherwise controlled by the Receivership Entities
3 or were otherwise purchased with assets of the Receivership Entities. The Receiver
4 holds exclusive authority and control over the assets of the Receivership Entities,
5 including over the causes of action alleged herein, over which this Court has
6 ancillary and supplemental jurisdiction.

7 5. On information and belief, Frances McCaffrey ("Defendant") is a
8 citizen and resident of the County of Los Angeles, California, and is a recipient of
9 assets of the Receivership Entities as described further herein.

10 III. FACTUAL ALLEGATIONS

11 A. The Purported Business of the Receivership Entities and the 12 Commencement of the SEC Action

13 6. As alleged by the Commission in the SEC Action, NASI raised money
14 from investors by selling them Automated Teller Machines ("ATMs"), leasing the
15 ATMs back from investors, managing the ATMs for the investors, and paying the
16 investors "rents" that were guaranteed to total at least 20% of the purchase price
17 paid for the ATMs per year. The Receivership entities also paid referral fees to
18 investors and other agents who recruited new investors to purchase ATMs.

19 7. In actuality, the Receivership Entities did not sell any ATMs to
20 investors, but instead fabricated and sold fictitious ATMs with fabricated serial
21 numbers and locations. The "rents" paid to investors who purchased fictitious
22 ATMs, as well as referral fees paid to investors and agents, were paid from the
23 amounts raised from other investors. Thus, NASI operated a classic Ponzi scheme.

24 8. On or about September 17, 2014, the Commission initiated the SEC
25 Action against the Receivership Entities and their principals Joel Gillis and Edward
26 Wishner, alleging violations of federal securities laws. The Commission petitioned
27 for the Receiver's appointment, and on September 30, 2014 and October 29, 2014,
28

1 this Court entered orders appointing the Receiver, first on a temporary basis and
 2 then as permanent receiver for the Receivership Entities.

3 **B. The Receiver's Authority and Investigation Pursuant to His**
 4 **Appointment**

5 9. Pursuant to the terms of his appointment, the Receiver is vested with
 6 exclusive authority and control over the assets of the Receivership Entities.
 7 Specifically, Article XII of the Preliminary Injunction vests the Receiver with the
 8 "full powers of an equity receiver, including, but not limited to . . . full power to
 9 institute, pursue, and prosecute all claims and causes of action . . ."

10 10. The Receiver's investigation to date supports and confirms the
 11 Commissions allegations in the SEC Action, including that NASI operated a Ponzi
 12 scheme, sold fictitious ATMs to investors and made rent and referral fee payments
 13 to investors from funds raised from other investors. Defendants Gillis and Wishner
 14 filed answers to the SEC's complaint in which they admit the facts supporting the
 15 SEC's Ponzi scheme allegations.

16 **C. Criminal Indictment and Guilty Pleas**

17 11. On December 16, 2014, Gillis and Wishner were arrested and charged
 18 with mail fraud, wire fraud, conspiracy, and aiding and abetting. *United States v.*
 19 *Gillis et al.*, C.D. Cal. Case No. 14-CR-00712-SJO. Gillis and Wishner waived
 20 indictment, surrendered their passports, and were released on bail. On January 13,
 21 2015 and January 21, 2015, respectively, Wishner and Gillis plead guilty to all four
 22 counts of the criminal information. In connection with Gillis' guilty plea, a
 23 statement of facts signed by Gillis that supports the guilty plea was filed by the
 24 government ("Statement of Facts"). As part of his guilty plea, Gillis stated under
 25 oath that the facts in the Statement of Facts were true. The Statement of Facts is
 26 attached hereto as Exhibit A.

27
 28

12. The Statement of Facts is fully incorporated herein by reference. The facts stated therein are included in this complaint as though fully restated and alleged herein.

D. The Fraudulent Transfers to Defendant From the Receivership Entities

13. Attached hereto as Exhibit B is a schedule of bank transfers from Defendant to NASI and from NASI to Defendant. As the schedule reflects, the net amount received by Defendant ("Profit Amount") is calculated by subtracting (a) transfers from NASI to Defendant ("Payments from NASI") from (b) transfers from Defendant to NASI ("Deposit Amount"). Defendant's Profit Amount is \$1,419,861.50.¹

14. Defendant had no business dealings with NASI apart from transactions relating to the purchase and leasing of fictitious ATMs and provided no services or other value to NASI other than amounts paid for the fictitious ATMs.

COUNT I – FRAUDULENT TRANSFER

15. The Receiver incorporates herein each and every allegation contained in Paragraphs 1 through 14, inclusive, hereinabove set forth.

16. Over the course of its pre-receivership operations, NASI paid the Profit Amount to Defendant with the intent to hinder, delay, or defraud NASI's creditors. Such payments were made from the proceeds of the Ponzi scheme which were generated from investors in the scheme.

17. The Receivership Entities received nothing of value in exchange for the payments that comprise the Profit Amount.

18. At the time the payments comprising the Profit Amount were made to Defendant, NASI was engaged in or about to engage in business transactions for

¹ All transfers from Payments from NASI occurring (a) after Defendant received payments equal to the Deposit Amount, and (b) more than seven years prior to the date of filing this Complaint have been excluded from the calculation of the Profit Amount.

1 which its remaining assets were unreasonably small in relation to the business or
2 transaction.

3 19. NASI was insolvent, or became insolvent shortly after the subject
4 payments comprising the Profit Amount were made to Defendant.

5 20. NASI intended to incur, or believed or reasonably should have believed
6 it would incur, debts beyond its ability to pay as they became due.

7 21. As a consequence, the full Profit Amount is an actual and
8 constructively fraudulent transfer under California's Uniform Fraudulent Transfer
9 Act ("CUFTA"), Cal. Civ. Code section 3439, *et seq.*, and is subject to immediate
10 disgorgement to the Receiver.

11 **COUNT II – UNJUST ENRICHMENT**

12 22. The Receiver incorporates herein each and every allegation contained
13 in Paragraphs 1 through 21, inclusive, hereinabove set forth.

14 23. As described above, NASI paid the Profit Amount to Defendant in
15 connection with the transactions relating to the purchase and leasing of fictitious
16 ATMs. Such payments were made from the proceeds of a Ponzi scheme which
17 were generated from investors in the scheme.

18 24. Defendant benefitted by way of receipt of the Profit Amount and it is
19 unjust and inequitable for Defendant to retain this benefit at the expense of the
20 Receivership Entities and/or the other defrauded investors and creditors of the
21 receivership estate.

22 25. Defendant has no legitimate claim to the Profit Amount as it represents
23 fictitious profits paid to Defendant in furtherance of NASI's fraudulent Ponzi
24 scheme and in order to entice new investors and further perpetuate the scheme.

25 26. The Receivership Entities received no value or consideration in
26 exchange for the Profit Amount.

27 27. Defendant has thus been unjustly enriched in the amount of the Profit
28 Amount, which is subject to immediate disgorgement to the Receiver.

PRAYER FOR RELIEF

WHEREFORE, the Receiver prays for judgment against the Defendant as follows:

On Count I:

(a) For judgment against Defendant avoiding the transfers from NASI to Defendant comprising the Profit Amount; and

(b) For an order deeming the Profit Amount paid to Defendant to be held in constructive trust for the benefit of the Receivership Entities; and

(c) For an order directing Defendant to immediately pay the Profit Amount, plus prejudgment interest and costs, to the Receiver; and

(d) For such other and further relief as the Court may deem proper.

On Count II:

(a) For judgment against Defendant in the amount of the Profit Amount, plus prejudgment interest and costs; and

(b) For an order deeming the Profit Amount paid to Defendant to be held in constructive trust for the benefit of the Receivership Entities; and

(c) For an order directing Defendant to immediately pay the Profit Amount, plus prejudgment interest and costs, to the Receiver; and

(d) For such other and further relief as the Court may deem proper.

Dated: October 6, 2015

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Ted Fates

TED FATES
Attorneys for Plaintiff
WILLIAM J. HOFFMAN, Receiver